



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/615,130	07/08/2003	Dennis R. Zander	87054.000006	8068
23387	7590	09/30/2004	EXAMINER	
Stephen B. Salai, Esq. Harter, Secrest & Emery LLP 1600 Bausch & Lomb Place Rochester, NY 14604-2711			MCCARRY JR, ROBERT J	
		ART UNIT	PAPER NUMBER	
		3617		

DATE MAILED: 09/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/615,130	ZANDER, DENNIS R.	
	Examiner	Art Unit	
	Robert J. McCarry, Jr.	3617	(44)

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 21 June 2004.

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-16 and 20-30 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) 10-16 is/are allowed.

6) Claim(s) 1-9 and 20-30 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 11/17/03.

4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
5) Notice of Informal Patent Application (PTO-152)
6) Other: ____.

DETAILED ACTION

The Terminal Disclaimer in response to claims 2-9 and 12-16 has been received and approved. The Statutory Double Patenting rejection has been removed since the previous patent discloses the feature of a "signal light" while the instant application recites only a "signal"

Claim Objections

Claims 1-16 and 20-30 are presently pending in the application. The present claim set does not include claims 17, 18 or 19. The Examiner has reviewed claim 1-16 and 20-30 and will renumber the claims upon allowance.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1, 10, 11 and 20-30 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 and 8-19 of U.S. Patent No. 6,600,429. Although the conflicting claims are not identical, they are not patentably distinct from each other because the application and prior patent both

disclose a controller connected to a train proximity sensor. The application recites the use of a red signal and a green signal. The prior patent discloses the use of a red signal light and a green signal light. It would have been obvious to one of ordinary skill in the art to understand that red and green signal lights are types of signals from the broader are of signals recited in the instant claims. The Examiner has also interpreted the terms in the instant application to be interchangeable with the terms of the prior patent. Claim 1 of the application recites that the controller "activates" the signal light while claim 1 of the prior patent show the controller "turning on" the signal light. It would be obvious to one of ordinary skill in the art that these terms are one in the same.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2 and 4 are rejected under 35 U.S.C. 102(b) as being anticipated by Lane et al (US 6,025,789).

Lane et al discloses a model train sensor and signal comprised of a UHF receiver 10, which detects a remote signal from a train and determines the proximity of the train. The receiver sends the signal to a microcontroller 30, which monitors the time of the signal, received by the train and then activates a visual and audible signal. When a signal is transmitted it is in the form of a yellow signal 44 showing that a signal is being received and monitored for a predetermined length of time set by the microcontroller 30.

When the predetermined time is met the microcontroller interprets a train is in the controlled path and lights a red signal 48, which shows other trains in the system to stop. When the microcontroller determines the train has passed the red signal is deactivated and a green signal 52 is then activated, showing other trains in the system that it is safe to precede. The flowchart of figure 2 shows the step by step functioning of the system.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3, 6-9 rejected under 35 U.S.C. 103(a) as being unpatentable over Jenks (US 3,163,125).

Lane et al discloses a proximity detector and signaling system as described above. However, Lane et al does not disclose the use of a semaphore as a type of signal. Jenks discloses a semaphore arm 11 having red, yellow and green filters mounted on opening 13, 14 and 15 respectively and pass over a light when the arm of the semaphore moves. It would have been obvious to one of ordinary skill in the art to have used a semaphore as a type of signal to show that a part of the train system is empty and safe for a vehicle to proceed or to show that the system is full and stop the vehicle.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over

Bonanno (US 2,925,584).

Lane et al discloses a proximity detector and signaling system as described above. However, Lane et al does not disclose the use of a swinging banjo as a type of signal for the vehicles. Bonanno discloses a swinging banjo signal to signal for trains to precede or stop at a certain point on a train system. When a train passes and energizes the circuit of the banjo signal the signal will swing to show that it is unsafe for another train to proceed. When there is no train to energize the circuit the banjo will sit stationary to show that it is safe to proceed through the system. It would have been obvious to one of ordinary skill in the art to use a swinging banjo as a type of signal for trains to convey a stop signal or a proceed signal.

Response to Arguments

Applicant's arguments with respect to claims 1-16 and 20-30 have been considered but are moot in view of the new ground(s) of rejection.

Allowable Subject Matter

Claims 10-16 are allowed.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert J. McCarry, Jr. whose telephone number is (703) 305-0581. The examiner can normally be reached on Monday through Friday 8:00am to 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, S. Joseph Morano can be reached on (703) 308-0230. The fax phone

number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

RJM
August 23, 2004


ROBERT J. McCARRY, JR.
PATENT EXAMINER
3617
8/23/04